

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RYLEE MATTHEW FLEURY,

11 Plaintiff,

v.

12 CHARLIE PLATT, *et al.*,

13 Defendants.

14 CASE NO. C24-1321-JCC

ORDER

15 This matter comes before the Court on motions to dismiss from the following
16 Defendants: FedEx Corporation and Fredrick W. Smith (Dkt. No. 12); Shell USA, Inc. (Dkt. No.
17 14); Gretchen Watkins (Dkt. No. 15); and Universal Protection Services, LP (named in the
18 complaint as “Allied Universal Services”), through a notice of joinder (Dkt. No. 23). Having
19 thoroughly considered the briefing and the relevant record, the Court GRANTS each motion as
20 described below for the reasons explained herein.

21 **I. BACKGROUND**

22 This case arises from Plaintiff’s termination following his refusal to wear a mask when
23 making FedEx package deliveries during the COVID-19 pandemic. (*See generally* Dkt. No. 5.)
24 According to the Amended Complaint,¹ Plaintiff worked as a delivery driver for Defendant

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26 ¹ Plaintiff’s 101-page *pro se* Amended Complaint is not a model of clarity. It is heavy on legal
citations and conclusory allegations yet light on factual assertions. (*See generally* Dkt. No. 5.)

1 Kinetic Logistics, a FedEx contractor. (*Id.* at 18.)

2 In August 2021, Plaintiff attempted a delivery to Shell's Anacortes refinery, where
3 security personnel contracted through Universal Protection Services confronted Plaintiff. (*Id.* at
4 19.) They instructed Plaintiff to wear a mask, which he refused to do on medical and religious
5 grounds. (*Id.* at 19–20.) Shell relayed an account of the incident to Kinetic and informed Kinetic
6 that Plaintiff is not permitted on Shell's premises without a mask. (*Id.* at 20–21.) Kinetic then
7 directed Plaintiff to wear a mask when making deliveries to Shell despite his asserted medical
8 and religious concerns. (*Id.*) Plaintiff attempted another delivery to Shell's facility, again
9 unmasked, and was told to leave. (*Id.* at 21.) An account of this incident was relayed to Kinetic,
10 who terminated Plaintiff for his repeated refusals to wear a mask or submit to COVID-19 testing.
11 (*Id.* at 21–22.) According to Plaintiff, Kinetic would not honor his medical or religious bases for
12 not wearing a mask. (*Id.*)

13 Plaintiff filed a complaint in August 2024, which he later amended as of right. (Dkt. Nos.
14 1, 5.) His Amended Complaint, as much as the Court can discern, includes causes of action for
15 civil rights violations, discriminatory conduct, a failure to accommodate, wage violations, and
16 tort-based claims (amongst others). (*See generally* Dkt. No. 5.) Plaintiff's claims appear to be
17 brought against all Defendants. (*Id.*) He brings them on behalf of himself and similarly situated
18 individuals. (*Id.* at 17–18.)

19 Defendants now move to dismiss. Specifically, FedEx and Mr. Smith move to dismiss for
20 failure to state a claim and for lack of personal jurisdiction over Mr. Smith. (Dkt. No. 12). Shell
21 and Ms. Watkins move on similar grounds, (*see generally* Dkt. No. 15), to which Universal
22 joins, (*see generally* Dkt. No. 23).

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24
25 Nevertheless, the Court does its best to glean its allegations and assertions in accordance with the
26 Ninth Circuit's mandate to liberally construe *pro se* pleadings. *See Eldridge v. Block*, 832 F.2d
1132, 1137 (9th Cir. 1987).

1 **II. DISCUSSION**

2 **A. Defendants Watkins and Smith**

3 The Court first addresses Mr. Smith and Ms. Watkins' Rule 12(b)(2) motion, which
 4 argues that this Court lacks personal jurisdiction over them. (*See* Dkt. Nos. 12 at 8–10, 15 at 5–
 5 6.) A court may only assert personal jurisdiction over a defendant “when the defendant has
 6 sufficient [minimum] contacts within [Washington] ‘such that the maintenance of the suit does
 7 not offend traditional notions of fair play and substantial justice.’” *J. McIntyre Mach., Ltd. v.*
 8 *Nicastro*, 564 U.S. 873, 880 (2011) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316
 9 (1945)). To the extent such contacts are sufficient, general or specific jurisdiction results. *See,*
 10 *e.g.*, *HDT Bio Corp. v. Emcure Pharm., Ltd.*, 704 F. Supp. 3d 1175, 1184 (W.D. Wash. 2023).

11 Plaintiff's complaint fails to establish this Court's jurisdiction over Mr. Smith or Ms.
 12 Watkins. As to general jurisdiction, Mr. Smith is alleged to be domiciled in Tennessee, (Dkt. No.
 13 5 at 13–14), and Ms. Watkins is alleged to be a Texas citizen, (*id.* at 14). Therefore, they cannot
 14 be “fairly regarded as home” in Washington. *Goodyear Dunlop Tires Operations, S.A. v. Brown*,
 15 564 U.S. 915, 924 (2011); *see Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (for an
 16 individual defendant, personal jurisdiction is contingent on one's domicile). As to specific
 17 jurisdiction, Plaintiff only alleges that Ms. Watkins is Shell's president and Mr. Smith is FedEx's
 18 CEO. (Dkt. No. 5 at 14.) Their official roles at the company, without more, do not support a
 19 finding of the purposeful availment and/or direction needed to establish personal jurisdiction. *See*
 20 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

21 Accordingly, Plaintiff's claims against Mr. Smith and Ms. Watkins are DISMISSED
 22 without prejudice.

23 **B. Defendants FedEx, Shell, and Universal**

24 The Court next addresses FedEx, Shell, and Universal's Rule 12(b)(6) motions to dismiss
 25 based on the failure to state a claim. (*See* Dkt. Nos. 12 at 10–20, 14 at 4–17, 23 at 1–3.)

1 1. Rule 12(b)(6) Motion – Legal standard:

2 A defendant may move for dismissal when a plaintiff “fails to state a claim upon which
 3 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint contains
 4 “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
 5 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While the pleading standard does not require
 6 detailed factual allegations, it demands more than “an unadorned, the-defendant-unlawfully-
 7 harmed-me accusation.” *Id.* Thus, when a complaint fails to make “either direct or inferential
 8 allegations respecting all the material elements necessary to sustain recovery under some viable
 9 legal theory,” it is subject to dismissal pursuant to Rule 12(b)(6). *Bell A. Corp. v. Twombly*, 550
 10 U.S. 544, 562 (2007). In addition, a complaint is subject to dismissal if the moving party is
 11 entitled to judgment as a matter of law. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

12 2. Plaintiff Fails to State a Claim Against FedEx, Shell, or Universal

13 Plaintiff asserts various claims alleging that Universal, in implementing FedEx’s and
 14 Shell’s masking policies,² refused to accommodate Plaintiff’s medical and religious reasons for
 15 not wearing a mask. (Dkt. No. 5 at 19–23.) None are adequately pleaded.

16 i. 42 U.S.C. § 1983

17 First, Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983. (See Dkt. No. 5 at 29–36.) To
 18 state a § 1983 claim, Plaintiff must demonstrate that the defendants acted under color of state
 19 law. *See Learned v. City of Bellevue*, 860 F.2d 928, 933 (9th Cir. 1988). Here, Plaintiff argues
 20 that Universal, FedEx, and Shell, by “[i]mplementing and enforcing government mask

22 ² Plaintiff ascribes joint liability to FedEx and Shell based on a theory of joint employment. (Dkt.
 23 No. 5 at 92–93.) The Ninth Circuit has articulated five factors for determining a joint employer:
 24 “(A) The nature and degree of control of the workers; (B) The degree of supervision, direct or
 25 indirect, of the work; (C) The power to determine the pay rates or the methods of payment of the
 26 workers; (D) The right, directly or indirectly, to hire, fire, or modify the employment conditions
 of the workers; [and] (E) Preparation of payroll and the payment of wages.” *Torres-Lopez v.
 May*, 111 F.3d 633, 638 (9th Cir. 1997). Plaintiff makes no allegations supporting any of these
 factors. (See generally Dkt. No. 5.)

1 mandates,” became government actors. (Dkt. No. 5 at 6.) The Ninth Circuit recognizes four
 2 instances when private action is taken under the color of state law: “(1) public function; (2) joint
 3 action; (3) governmental compulsion or coercion; and (4) governmental nexus.” *Sutton v.*
 4 *Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835–36 (9th Cir. 1999). Plaintiff’s allegations,
 5 (*see generally* Dkt. No. 5), satisfy none of the standards.³

6 While Plaintiff asserts that Defendants were “[c]oordinating with state officials on
 7 enforcement policies,” (Dkt. No. 5 at 6), he fails to support this assertion with *any* factual
 8 allegations. (*See generally id.*) And mere “compliance with generally applicable laws” is
 9 insufficient “to convert private conduct into state action.” *Heineke v. Santa Clara Univ.*, 965
 10 F.3d 1009, 1013 (9th Cir. 2020). Nor does Plaintiff provide allegations supporting the other ways
 11 a private party can act under the color of state law, (*see generally* Dkt. No. 5), such as through
 12 joint action or a governmental nexus. *See Jensen v. Lane Cnty.*, 222 F.3d 570, 575 (9th Cir.
 13 2000) (citing *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350, 357–58, 95 (1974)).

14 Accordingly, Plaintiff fails to allege a § 1983 claim against FedEx, Shell, or Universal.

15 ii. 42 U.S.C. § 1985

16 Plaintiff also brings a claim pursuant to 42 U.S.C. § 1985 based on an alleged conspiracy
 17 to deprive him of his constitutional rights. (Dkt. No. 5 at 39–40.) Again, this claim is not
 18 plausibly pleaded for many reasons, including the failure to allege an agreement or
 19 discriminatory animus.

20 As to the existence of an agreement, Plaintiff must show that the defendants, in fact,

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 22 ³ Plaintiff cites *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982) and *Brentwood Academy v.*
 23 *Tenn. Secondary School Athletic Ass’n*, 531 U.S. 288 (2001). However, *Edmondson Oil* passed
 24 the public function test because both private actors and state actors were present together to seize
 25 the plaintiff’s property, 457 U.S. at 926, likewise, *Brentwood Academy* involved private and
 26 government entities being so intertwined to point of largely overlapping identity. 531 U.S. at
 303. Here, Plaintiff’s allegations do not support the notion that state and private actors were so
 intertwined as to be indiscernible; rather, he describes the conduct of private actors unilaterally
 enforcing generally applicable public health mandates. (*See generally* Dkt. No. 5.)

1 conspired with one another. *See Ziglar v. Abbasi*, 582 U.S. 120, 154 (2017). But his allegations
 2 merely describe a series of communications between Shell, FedEx, and Kinetic regarding
 3 Plaintiff's repeated refusal to wear a mask. (*See, e.g.*, Dkt. No. 5 at 23.) Such communications,
 4 alone, do not establish an agreement or conspiracy. *See, e.g.*, *Barnes v. City of Milton*, 2009 WL
 5 3294870, slip op. at 5 (W.D. Wash. 2009). Plaintiff must also show that Defendants' actions
 6 were motivated by class-based discriminatory animus. *Griffin v. Breckenridge*, 403 U.S. 88, 102
 7 (1971). The complaint is devoid of such allegations. (*See generally* Dkt. No. 5.)

8 As a result, Plaintiff fails to allege a § 1985 claim against FedEx, Shell, or Universal.

9 iii. Title VII

10 Plaintiff next asserts Title VII discrimination and retaliation claims pursuant to the Civil
 11 Rights Act of 1964. (Dkt. No. 5 at 36–39.) But Plaintiff does not affirmatively plead exhaustion
 12 and, even if he did, the claim(s) are not plausibly pleaded for many reasons. This includes that
 13 the complaint provides only vague references to the religious beliefs barring Plaintiff from
 14 complying with Defendants' mask policies. (*See generally* Dkt. No. 5.)

15 As to exhaustion, “[a] person seeking relief under Title VII must first file a charge with
 16 the EEOC [Equal Employment Opportunity Commission] within 180 days of the alleged
 17 unlawful employment practice.” *See Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1104 (9th
 18 Cir. 2008) (citing 42 U.S.C. § 2000e-5(e)(1)). Curiously, Plaintiff's complaint describes the
 19 required contents of an EEOC charge, (Dkt. No. 5 at 25), but fails to allege that he actually
 20 brought an EEOC charge (nor does it include a copy of his right to sue letter). (*See generally id.*)

21 As to the merits, Plaintiff's argument seems to be that Defendants' collective conduct
 22 represents religious discrimination. (*Id.* at 36–37.) But Plaintiff's supporting allegations, again,
 23 are wholly conclusory. Plaintiff fails to allege, for example, what his religious beliefs even are,
 24 or how they conflicted with an employment duty. (*See generally id.*) This is well short of what is
 25 needed to assert a *prima facie* case of religious discrimination. *See, e.g.*, *Bartholomew v.*
 26 *Washington*, 693 F. Supp. 3d 1107, 1114 (W.D. Wash. 2023); *Feds for Freedom v. Austin*, 2024

1 WL 2922804, slip op. at 10 (W.D. Wash. 2024).

2 Plaintiff similarly fails to establish a *prima facie* case of retaliation. *See Wallis v. J.R.*
 3 *Simplot Co.*, 26 F.3d 885, 891 (9th Cir. 1994). According to Plaintiff, he was terminated for
 4 *failing to comply* with a mask policy. (*See generally* Dkt. No. 5.) He does not allege that he was
 5 terminated for *objecting* to a mask policy. (*Id.*) There is a material difference between the two. In
 6 turn, only the latter would be a proper basis for a Title VII retaliation claim. *See* 42 U.S.C.
 7 § 2000e-3; *see also* *Koch v. Cal. Water Serv. Co.*, 2024 WL 4753850, slip op. at 11 (E.D. Cal.
 8 2024) (“Plaintiff was not terminated for objecting to Defendant’s COVID-19 policy . . . he was
 9 terminated for refusing to comply with it.”).

10 As such, Plaintiff fails to allege a Title VII violation by FedEx, Shell, or Universal.

11 iv. Disability Discrimination Under the ADA and WLAD

12 Plaintiff also asserts claims under the Americans with Disability Act (“ADA”) and the
 13 Washington Law Against Discrimination (“WLAD”). (Dkt. No. 5 at 37–39, 53–54.) This is
 14 based on a supposed breathing impairment. (*See id.* at 38.) Once again, the claims are not
 15 plausibly pleaded. (*See generally* *id.*)

16 To assert a *prima facie* disability discrimination claim, a plaintiff must plead numerous
 17 facts, including the existence of the qualifying disability.⁴ *See Staub v. Boeing Co.*, 919 F. Supp.
 18 366, 369 (W.D. Wash. 1996); *Riehl v. Foodmaker, Inc.*, 94 P.3d 930, 934 (Wash. 2004). Plaintiff
 19 merely alleges the existence of “a medical condition” that “exempted him from wearing a face
 20 mask.” (Dkt. No. 5 at 19.) But he fails to allege *what* his disability is and *how* it interfered with
 21 wearing a mask. He cannot self-diagnose a disability for purposes of plausibly pleading claims

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 23 ⁴ The ADA defines “disability” as: (1) a physical or mental impairment that substantially limits
 24 one or more of the major life activities of such individual, (2) a record of such impairment, or (3)
 25 being regarded as having such an impairment. *Kaplan v. City of N. Las Vegas*, 323 F.3d 1226,
 1231 (9th Cir. 2003) (quoting 42 U.S.C. § 12102(2)). The WLAD defines a disability as “the
 26 presence of a sensory, mental, or physical impairment that: (1) Is medically cognizable or
 diagnosable; or (2) Exists as a record or history; or (3) Is perceived to exist whether or not it
 exists in fact.” Wash. Rev. Code § 49.60.040(7)(a).

1 here. *See, e.g., Hooker v. Adams*, 2008 WL 2788404, slip op. at 8–9 (E.D. Cal. 2008); *Felkins v.*
 2 *City of Lakewood*, 774 F.3d 647, 651–52 (10th Cir. 2014).

3 Therefore, Plaintiff fails to allege ADA and WLAD disability claims against FedEx,
 4 Shell, or Universal.

5 v. Tortious Interference & Breach of Implied Contract

6 Plaintiff further asserts claims for tortious interference and breach of an implied contract.
 7 (Dkt. No. 5 at 50–53, 58, 59, 64.) This requires, amongst other things, the existence of a
 8 contractual relationship or, at least, a business expectancy. *See T-Mobile USA, Inc. v. Huawei*
 9 *Device USA, Inc.*, 115 F. Supp. 3d 1184, 1194 (W.D. Wash. 2015) (internal citations omitted);
 10 *Chandler v. Wash. Toll Bridge Auth.*, 137 P.2d 97, 101 (Wash. 1943). But nothing in the
 11 pleading suggests Plaintiff is anything but an at-will employee. (*See generally* Dkt. No. 5.) In
 12 turn, Plaintiff can be terminated for any reason and has no reasonable expectancy otherwise. *See*
 13 *Rose v. Anderson Hay & Grain Co.*, 358 P.3d 1139, 1141 (Wash. 2015). Thus, Plaintiff fails to
 14 allege tortious interference or a breach of an implied contract.⁵

15 vi. Privacy-Based Claims

16 The complaint also references Washington’s Privacy Act, RCW 9.73, and asserts, in
 17 conclusory fashion, that Defendants violated this and common law invasion of privacy rules. (*Id.*
 18 at 56.) The Privacy Act prohibits the disclosure or intercept of private communications, *Lewis v.*
 19 *State, Dept. of Licensing*, 139 P.3d 1078, 1083 (Wash. 2006), and Washington common law
 20 separately allows for invasion of privacy claims. *See, e.g., Reid v. Pierce Cnty.*, 961 P.2d 333,
 21 338 (Wash. 1998). But again, the complaint fails to provide allegations supporting either. (*See*
 22 *generally* Dkt. No. 5.) Thus, Plaintiff fails to allege privacy-based claims against FedEx, Shell,
 23 or Universal.

24 ⁵ Similarly and relatedly, Plaintiff’s complaint also references Washington’s Consumer
 25 Protection Act (“CPA”), RCW 19.86.020, and lists its elements. (Dkt. No. 5 at 54–55.) But it
 26 fails to provide any factual allegations supporting those elements. (*See generally id.*) Thus,
 Plaintiff fails to allege a CPA claim.

vii. Wage-Based Claims

Finally, the complaint also lists the elements for a wage claim under Washington law. (Dkt. No. 5 at 56–57.) And indeed, Washington has a myriad of wage-based laws, including the Minimum Wage Act, RCW 49.46. But, yet again, Plaintiff fails to allege any facts to support a wage claim. (*See generally* Dkt. No. 5.) Thus, to the extent Plaintiff even meant to assert such a claim, he once again fails to do so.

C. Class-Based Request(s)

According to the complaint, Plaintiff brings suit on behalf of himself and similarly situated individuals. (See Dkt. No. 5 at 17–18, 68–70.) But *pro se* plaintiffs cannot represent a class. See *Simon v. Hartford Life, Inc.* 546 F.3d 661, 664 (9th Cir. 2008). The primary reason being that the “[a]bility to protect the interests of the class depends in part on the quality of counsel and we consider the competence of a layman representing himself to be clearly too limited to allow him to risk the rights of others.” *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) (citation omitted). Therefore, all class-based claims are procedurally barred.

D. Remaining Defendants – Order to Show Cause

As a final matter, the Court turns to Plaintiff's Rule 4 compliance. Plaintiff filed his original complaint on August 22, 2024. (Dkt. No. 1.) As such, he was required to serve all named Defendants by November 22, 2024. *See Fed. R. Civ. P. 4(m)* (providing a 90-day time limit for service absent a showing of good cause).⁶ Yet Plaintiff has not provided the Court with any affidavits of service. *See Fed. R. Civ. P. 4(l)*. Thus, the Court ORDERS Plaintiff to show cause why he has failed to comply with Rule 4 as to all Defendants who have not yet lodged an appearance (and correspondingly moved to dismiss).

⁶ Plaintiff later amended the complaint by right. (Dkt. No. 5.) But this does not restart Rule 4's time limit(s) for serving defendants named in the original complaint. See, e.g., *Lomma v. Connors*, 2021 WL 5409289, slip op. at 1 (D. Haw. 2021). And here, the named defendants did not change between the original and amended complaint. (Compare Dkt. No. 1 at 1, with Dkt. No. 5 at 1.)

1 **III. CONCLUSION**

2 For the reasons described above, Defendants' motions to dismiss (Dkt. Nos. 12, 14, 15)
3 are GRANTED. The Court ORDERS as follows:

4 • All claims against Ms. Watkins and Mr. Smith are DISMISSED without prejudice.
5 • All claims against FedEx, Shell, and Universal are DISMISSED with prejudice.
6 • Because it does not appear that the pleading deficiencies and failures in law described
7 above could be cured through amendment, the Court will not provide Plaintiff leave
8 to amend. *See, e.g., Barahona v. Union Pac. R.R. Co.*, 881 F.3d 1122, 1134 (9th Cir.
9 2018) (leave to amend need not be granted if it would be futile).
10 • All class-related allegations and requests for relief shall be STRICKEN from the
11 Amended Complaint as procedurally barred.
12 • Plaintiff is ORDERED TO SHOW CAUSE within 30 days why his suit against all
13 remaining defendants should not be dismissed for lack of prosecution.

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15 DATED this 13th day of February 2025.

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19 John C. Coughenour
20 UNITED STATES DISTRICT JUDGE
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